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BY ECF

Honorable Brian M. Cogan
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Eric Boadi v. Detective William Greer, et al., 12 CV 2456 (BMC)(RLM)

Dear Judge Cogan:

I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, and the attorney assigned to the defense of the above-referenced matter. I write on behalf of this office to respectfully advise the Court that, unless otherwise directed to do so, this office will take no further action with respect to this matter until one or more of the five (5) remaining defendants has been served with a copy of the amended complaint.

By way of background, plaintiff filed his original complaint on May 14, 2012 alleging that he was falsely arrested and maliciously prosecuted as a result of a robbery which occurred in Brooklyn, New York on August 18, 2007. Plaintiff purported to name as defendants City of New York ("City"), New York City Police Department ("NYPD"), ADA Kami Gordon-Sommers, and Detectives Greer, Williams, Olinsky, Ryan, and Moy. Pursuant to 28 U.S.C. § 1915(e)(2)(B), Your Honor dismissed plaintiff's claims against defendants City, NYPD, and ADA Gordon-Sommers by Order dated May 29, 2012. See Docket Entry No. 4. In this same Order, Your Honor granted plaintiff time to amend his complaint to correct deficiencies in his malicious prosecution claim. On July 23, 2012, plaintiff filed an amended complaint in which he clarified his false arrest and malicious prosecution claims and asserted additional claims. See Docket Entry No. 9. Thereafter, by Order dated July 24, 2012, Your Honor dismissed all of plaintiff's claims except his claim for deliberate indifference. See Docket Entry No. 13.

Due to plaintiff's filing of an amended complaint, the original complaint is no longer the operative pleading. While Detectives Greer, Williams, Olinsky, Ryan, and Moy are aware of this case, this office has not yet resolved representation and thus, cannot accept service of the amended complaint on their behalf. As such, each of the individually named defendants must be served a copy of the amended complaint in order for this matter to proceed.

Once each of the individually named defendants have been properly served with a copy of the amended complaint, and representation is resolved, this office anticipates filing a Fed. R. Civ. P. 12(b)(6) motion to dismiss on their behalf. As a basis for this motion, this office believes that plaintiff's claim for deliberative indifference is time-barred. Plaintiff alleges in his amended complaint that defendants deprived him of food, water, and use of the bathroom on August 21, 2007. As such, plaintiff's deliberative indifference claim expired on August 21, 2010. See Shomo v. City of New York, 579 F.3d 176, 181 (2d Cir. 2009) (The "statute of limitations for claims arising under Section 1983 is three years, and...accrues, ordinarily, when a plaintiff knows or has reason to know of the injury forming the basis of his action"). However, plaintiff did not file the instant action until May 14, 2012 – nearly 21 months after the statute of limitations had run.

In light of the above, this office writes to respectfully advise the Court that, unless otherwise directed to do so, this office will take no further action with respect to the amended complaint until one or more of the five (5) remaining defendants has been served with a copy of the amended complaint.

Thank you for your consideration of the within matters.

Respectfully submitted,



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cc: **BY MAIL**
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